



COUNTY OF LOS ANGELES

REGISTRAR-RECORDER/COUNTY CLERK

12400 Imperial Highway – P.O. Box 1024, Norwalk, California 90651-1024 – www.lavote.net

DEAN C. LOGAN

Registrar-Recorder/County Clerk

December 15, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

24 DECEMBER 15, 2009

Sachi A. Hamai

SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**REQUEST TO TERMINATE FOR CONVENIENCE
AGREEMENT NUMBER 73956 WITH PREMIER ELECTION SOLUTIONS, INC. FOR
ELECTION TALLY SYSTEM, AUTOMATED BALLOT LAYOUT
SYSTEM AND DIRECT RECORDING ELECTRONIC DEVICE SYSTEM
(All Supervisorial Districts) (3 Votes Required)**

**CIO RECOMMENDATION: (X) APPROVE () APPROVE WITH MODIFICATION
() DISAPPROVE**

SUBJECT

Termination of Agreement Number 73956 with Premier Election Solutions, Inc., formerly Diebold Election Systems, Inc. for an Election Tally System, Automated Ballot Layout System, and Direct Recording Electronic Device Voting System.

IT IS RECOMMENDED THAT YOUR BOARD:

Approve the termination of Agreement Number 73956 (Agreement) with Premier Election Solutions, Inc. (Contractor) for an Election Tally System (ETS), Automated Ballot Layout (ABL) System, and Direct Recording Electronic (DRE) Device System (collectively the "Integrated System") and direct the Registrar-Recorder/County Clerk to send Contractor the Notice of Termination to be effective approximately 30 days from the date on the Notice, as required under the Agreement.

PURPOSE/JUSTIFICATION OF THE RECOMMENDED ACTION:

The recommended action will allow the County to terminate the Agreement for the Integrated System which is at a standstill with no viable solution in sight due to significant regulatory, legislative, and technical constraints related to certification of voting systems and redirect its focus to a new voting system.

In May 2007, the California Secretary of State (SOS) initiated a “top to bottom” review of voting systems. A review of the ETS/ABL system, generally known as “GEMS 2” (General Election Management System) was initiated in August 2007 but was never completed. As such, GEMS2 has not been approved for use in the State of California.

In addition, the SOS imposed several changes to the use of direct recording electronic voting systems in the State of California. These changes, primarily the requirement to manually recount 100% of all votes cast on DREs, made it impractical and cost prohibitive to continue use of DREs for early voting in Los Angeles County and, in consultation with your Board, the RR/CC discontinued the program in 2008. Recognizing the diminishing likelihood of obtaining certification of GEMS 2, and the impracticability of using the DRE's, the Contractor has requested to terminate the Agreement. Considering the fundamental change in the regulatory climate, and the evolution of information and voting systems technology, since the contract's initiation, the RR/CC agrees there is no viable solution in sight and has determined that contract termination is the optimal outcome at this point and the best way to move forward. Doing so will allow the County to rededicate itself to the original strategy of voting system modernization from a fresh, contemporary vantage point and to focus its energy and resources on a new voting system assessment project free of any contractual obligation with a commercial voting systems vendor.

Pursuant to Paragraph 36 (Termination for Convenience) of the Agreement, allows for termination when such action is deemed by County to be necessary and in its best interest. Termination under this provision of the Agreement has been reviewed by County Counsel for legal sufficiency.

Implementation of Strategic Plan Goals

Goal 1: OPERATIONAL EFFECTIVENESS: Maximize the effectiveness of processes, structure, and operations to support timely delivery of customer-oriented and efficient public services.

Strategy 1: Fiscal Sustainability: Promote sound, prudent, and transparent short- and long-range fiscal policies and practices that help ensure maintenance of critical, high priority County public services despite cyclical economic conditions.

Termination of the ETS/ABL/DRE Agreement will allow County to reallocate over two million in funds earmarked for this Agreement toward a voting systems modernization initiative that meets current regulatory standards.

FISCAL IMPACT/FINANCING:

The project was funded using \$1,750,000 Information Technology Infrastructure Fund (ITF); a \$1,000,000 loan (which has been repaid in full) from the Productivity Investment Fund (PIF) provided by the Quality and Productivity Commission; and \$1,285,205 Departmental funding for a total of \$4,035,205. Approximately \$2,581,789 was earmarked for the ETS/ABL software, training, and maintenance; and \$1,453,416 for DRE voting system hardware, software, training, and maintenance.

The Department has received all requested goods and services related to the DREs which include 171 DRE units, transport carts, DRE software, and support services for a total cost of \$1,113,770.18 paid to the Contractor. At this time the Department is exploring options for the resale of this equipment.

The Contractor has also completed the majority of the work related to ETS/ABL (GEMS 2) software and successfully passed Federal certification in March 2007. The RR/CC has received the executable files for the GEMS 2 software. In accordance with the Agreement, the Contractor was paid for specific tasks and deliverables outlined in Exhibit B, Price and Schedule of Payments. However, several deliverables are contingent upon State and Federal certification of the Integrated System, and therefore will not be paid. To date, \$850,498.90 has been expended on the development and testing of the ETS/ABL (GEMS 2) software and \$51,380.31 for other professional and support services, for a total ETS/ABL expenditure of \$901,879.21. Total contract expenditures are \$2,015,649.39 with a contract balance of \$2,019,555.61. Additionally, in its request for termination, the Contractor agrees to a mutual release of any claims, thus no further payments will be made to the Contractor.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

Upon a motion from Supervisor Knabe on March 14, 2000, the Board requested RR/CC to further explore electronic voting. On June 8, 2000, two vendors (Sequoia and Global) presented a demonstration of their Direct Recording Electronic (DRE) voting solutions, of which the Global solution was the highest-ranked. This resulted in a pilot project for the purchase and implementation of 37 DRE units on July 13, 2000, under a Purchase Order at a cost of \$334,021. The purchase included custom software interface file and support services for use in the November 7, 2000 General Election.

Following the successful pilot project, the RR/CC developed and released a Request for Proposals for a multi-year contract to provide the County with DREs and a replacement for the County's internally developed Micro Tally System (MTS) which resulted in the

current Agreement (#73956) approved by the Board on April 16, 2002. The Agreement included three major components: Election Tally System (ETS); Automated Ballot Layout (ABL); and Direct Recording Electronic (DRE) devices. The ETS/ABL component (GEMS 2) would replace the County's MTS and interface with ISD's mainframe located in Downey which controls the publication of election results on RR/CC's public-facing website. GEMS 2 would provide software to create vote recorder pages for a 312 card ballot, multiple 52 voting position ballots, sample ballot booklets with candidate statements and measure text, integrate DRE early voting, vote-by-mail ballots and card voting precinct vote totals into one set of election results, and supporting functions and reporting. The DRE component would provide hardware, software, and support services. The DRE units were used during early voting periods prior to major statewide elections and to assist disadvantaged and visually-impaired voters at specific locations around the County.

The City of Los Angeles was also interested in the acquisition of the Integrated System and use of the DREs in City elections. An agreement with the City of Los Angeles was adopted by your Board on February 4, 2003. The City agreement granted to the City a license to use the ETS/ABL component (GEMS 2), had it been fully developed and certified, in addition to the use of the DRE's in City elections. The City was required to pay the County \$1,000,000 for the use of the Integrated System, had it been fully developed, certified, and accepted by the County. To date, the City no longer uses any part of the Integrated System and no payments to the County have been made by the City pursuant to this agreement. The term of the agreement is 4 years with 5 one-year extensions for a total of nine (9) years. Under the terms and conditions of the agreement with the City of Los Angeles, the agreement with the City will automatically terminate in the event the County terminates its Agreement with the Contractor.

The ETS/ABL/DRE Agreement, executed on April 16, 2002, provided specific tasks and deliverables to be completed within a specified 18-month time period for delivering the entire Integrated System.

DRE voting began with the November 2002 General Election and has been available to the County's voters during the early voting period in major statewide elections. In addition to voters with specialized needs, over 200,000 of the County's voters have availed themselves of this voting option. From 2002 to 2006, the DRE AccuVote-TS TouchScreen model was used. A change in State law required all electronic voting devices to provide the voter with a voter verifiable paper audit trail (VVPAT). As such, the County exercised the provision in the Agreement to upgrade the DREs to a VVPAT-compatible model in early 2006. On August 3, 2007 and subsequently revised on October 25, 2007, the SOS de-certified and then re-certified the upgraded DRE equipment with stringent conditions including the requirement for a 100% manual recount of all ballots cast on DREs. The SOS, in making these changes, directed that DRE contractors should pay the cost of the manual recount. As this would be impractical given the volume of early voting ballots cast and the large number of

individual ballot styles generated in elections held, this effectively made DRE voting unusable in Los Angeles County.

With regard to the ETS/ABL component (GEMS 2), this time period was considered feasible as the project essentially involved the customization of existing certified voting system products. The deliverable documents required for the Analysis and Design phase of the project were completed, accepted, and paid for, by early 2003, after which Contractor began the development and programming of the GEMS 2 system based on the existing certified GEMS system.

The goal from its inception was to use the new GEMS 2 system for production tally of the November 2003 Consolidated Elections. By June of 2003, the system was completed and the hardware installed. Shortly before that election, however, former California Secretary of State, Kevin Shelley, made a clarification that the approval they had granted was for using the new GEMS 2 system in parallel with Los Angeles County's existing certified MTS system and not for official tally of the November 2003 Consolidated Elections. Such a parallel tally was not feasible; therefore, RR/CC quickly prepared the MTS system for tally, and postponed the tally of the ballots on the GEMS 2 system until December.

During the GEMS 2 tally of the November 2003 election ballots (in December 2003), the RR/CC encountered major performance issues with the Central Tally System (CTS) module of the GEMS 2 system that confirmed the software was not ready for high volume ballot processing. GEMS 2 operated and processed the ballots correctly, however, the software could not process the ballot data onto the CTS computer memory with sufficient speed which caused the system to freeze. From 2004 to 2005, the Contractor, working very closely with RR/CC, carried out some major reprogramming of the system to address the performance problem and to fix other identified bugs, and performed several rounds of additional testing required under the contract.

By 2005, however, the certification environment in California had dramatically changed. The new Secretary of State, Bruce McPherson, placed a hold on new voting system certification and implemented a new policy requiring all new voting systems to undergo federal testing prior to state testing and certification. Contractor contracted with a federal testing laboratory to conduct the federal testing, which involved a full code review and resulted in numerous required code modifications, notably the addition of annotation to every single line of code. Contractor made these code changes in 2006, but by that time, the creation of the Federal Election Assistance Commission (EAC), as authorized by the Help America Vote Act (HAVA) replaced the National Association of State Election Directors (NASD) as the federal testing authority which threatened to undermine the federal testing process for the Contractor. Ultimately, the EAC granted federal approval under the old NASD testing regime in March of 2007. Secretary of State, Debra Bowen agreed to test the GEMS 2 system in lieu of the MTS system as part of her "top-to-bottom" review of voting systems.

Subsequent to the SOS “top-to-bottom” review, the SOS implemented additional requirements and stringent regulations on DREs and voting system certification. DRE voting now requires a 100% manual recount on all votes cast on DREs and voting systems must meet additional requirements. The ETS/ABL (GEMS 2) was specifically designed and developed for Los Angeles County. It underwent a lengthy and rigorous testing process requiring additional software code and modifications and had been successfully tested at the federal level in early 2007, when the SOS new regulations were imposed. These changes made it impractical and cost prohibitive to continue use of DREs for early voting in Los Angeles County. Additionally, the changes in the regulatory climate and voting systems technology further diminishing the likelihood of obtaining certification of GEMS 2, the Contractor requested to terminate the Agreement.

Premier Election Solutions requests that the Agreement be terminated by the County under the Termination for Convenience provision of the contract. The Department has thoroughly evaluated the current conditions and the prospects of continuing the project and has ultimately concluded that due to significant policy changes, new regulations and certification requirements and re-directed efforts toward the Department’s current voting systems assessment project, the Agreement is no longer beneficial to the County. This action will allow the County to re-allocate the remaining funding toward a voting systems modernization initiative that meets current regulatory standards and that has greater future sustainability. The Department, in consultation with County Counsel and the Chief Information Office (CIO), recommends the Agreement be terminated for convenience as permitted under Paragraph 36 of the Agreement. Because this recommendation is for the termination of the Agreement, a CIO analysis is not required.

County Counsel, CIO, and Chief Executive Office have reviewed and approved this Board letter.

IMPACT ON CURRENT SERVICES (OR PROJECTS):

Termination of the Agreement will not have an adverse affect on the County as RR/CC will continue to use its existing MTS election tally and ballot layout systems. Moreover, the County ended the use of DRE early in 2008. Early voting is currently only available using paper-based, InkaVote *Plus* ballots at RR/CC Headquarters for those voters unable to vote on Election Day or vote by mail.

CONCLUSION

Upon approval of the recommended action, it is requested that the Executive Officer/Clerk of the Board return one adopted stamped copy of the approved Board letter to:

County of Los Angeles
Registrar-Recorder/County Clerk
12400 Imperial Highway, Room 7201
Norwalk, CA 90650
Attention: Ngozi Ume, Manager
Finance & Management Division

Respectfully submitted,

Reviewed by:


DEAN C. LOGAN
Registrar-Recorder/County Clerk


RICHARD SANCHEZ
Chief Information Officer

DCL:KC:NU:hwk

c: Chief Executive Office
Acting County Counsel
Executive Officer, Board of Supervisors